

**Notice of Allowability****Application No.**

09/147,693

**Applicant(s)**

LUBITZ ET AL.

**Examiner**

Gerald G Leffers Jr., PhD

**Art Unit**

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

If claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

☒ This communication is responsive to the amendment filed 9/15/2004.

☒ The allowed claim(s) is/are 38-45, 49-62, 69-70 & 77-78 (now claims 1-26).

☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some\* c) ☐ None of the:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.

☒ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.

(a) ☒ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached

1) ☒ hereto or 2) ☒ to Paper No./Mail Date 9/17/1999.

(b) ☒ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).

☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

☐ Notice of References Cited (PTO-892)

☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)

☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_

☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material

5. ☐ Notice of Informal Patent Application (PTO-152)

6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_

7. ☒ Examiner's Amendment/Comment

8. ☐ Examiner's Statement of Reasons for Allowance

9. ☐ Other \_\_\_\_\_

### EXAMINER'S AMENDMENT

Receipt of an amendment filed 9/15/2004 is acknowledged. In the 9/15/2004 amendment applicants amended several claims (claims 38, 50, 69, 70, 77 & 78). Claims 38-45, 49-62, 69-70 & 77-78 are pending in the instant application.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Patrick Skacel on 11/26/2004. The application has been amended as follows:

#### In the claims:

In claim 39, line 1, the term "phages" has been deleted and replaced with the term --phage--.

In claim 45, line 1, the term --the-- has been inserted between the words "wherein" and "temperature-sensitive".

Claim 53. (currently amended) A vector comprising at least one copy of [a] the nucleic acid [according to] of claim 50 that comprises a bacterial expression sequence comprising a mutated OR or mutated OL operator sequence in operative linkage with a protein-coding sequence.

Art Unit: 1636

Claim 56. (currently amended) A bacterial cell transformed with [a] the nucleic acid [according to] of claim 50 that comprises a bacterial expression sequence comprising a mutated OR or mutated OL operator sequence in operative linkage with a protein-coding sequence.

In claim 69, line 5, the word --control-- has been added after the words “first bacterial expression”.

In the specification:

At page 14, between lines 7 and 8, the heading --Brief Description of the Drawings-- has been inserted.

In the title:

The title has been changed to read as the following:

--Thermostable Phage Lambda Operator Mutants for Regulating Gene Expression--

***Drawings***

In order to avoid abandonment, the drawing informalities noted in the paper mailed on 9/17/1999, must now be corrected. Correction can only be effected in the manner set forth in the above noted paper, a copy of which is provided along with the instant action. Further, it is noted that Figures 3 & 4 comprise caption information that is more appropriately presented in the Brief Description of the Drawings rather than on the figures themselves. It would be remedial to

Art Unit: 1636

delete this information from Figures 3 & 4 and to include whatever is not already present in the

Brief Description of the Drawings section in the appropriate paragraphs in this section.

Appropriate correction for Figures 3 & 4 is required.

### *Conclusion*

Claims 38-45, 49-62, 69-70 & 77-78 are allowed (now claims 1-26).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerald G Leffers Jr., PhD whose telephone number is (571) 272-0772. The examiner can normally be reached on 9:30am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Remy Yucel can be reached on (571) 272-0781. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
GERRY LEFFERS  
PRIMARY EXAMINER

Gerald G Leffers Jr., PhD  
Primary Examiner  
Art Unit 1636

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